

# NEWS RELEASE

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***For Immediate Release***

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**SUBSIDIARY OF McKESSON IS SENTENCED FOR FELONY  
AUDIT OBSTRUCTION CHARGES  
AND WILL PAY \$7.3 MILLION AS CRIMINAL FINE AND CIVIL PAYMENT**

Ronald J. Tenpas, United States Attorney for the Southern District of Illinois, announced on February 18, 2005, that **TBC Products Inc.**, a subsidiary of McKesson Medical-Surgical Minnesota and the McKesson Corporation ("McKesson"), was sentenced in the United States District Court for the Southern District of Illinois to eight felony charges of endeavoring to obstruct a federal audit. **TBC Products Inc.** previously pled guilty on November 12, 2004.

**TBC Products Inc.** received a sentence of five years probation and a criminal fine of \$4 million. McKesson will also pay the separate sum of \$3,399,649 under a civil settlement agreement between the United States and McKesson to resolve claims involving the Medicare program. The plea agreement requires the defendant and McKesson to cooperate fully with the United States in connection with the Government's ongoing investigations and prosecutions of others for alleged violations of federal criminal and civil law.

Today's sentencing marks the third corporate criminal conviction arising from "Operation Headwaters," an undercover investigation by the Federal Bureau of Investigation, U.S. Postal Inspection Service, and Office of Inspector General for the Department of Health and Human Services, in which federal agents created an entity known as Southern Medical Distributors ("SMD"). While operating, SMD acted as a distributor of medical supplies, and was approached by various

manufacturers and distributors, including McKesson, who offered inducements to undercover personnel to purchase enteral products.

To date, “Operation Headwaters” has produced fines and civil judgments in excess of \$670,000,000.

In a Stipulation filed at the time of the guilty plea, the parties agreed that **TBC Products Inc.** formerly known as McKesson Medical-Surgical TBC Inc., is and has been a wholly owned subsidiary of McKesson Medical-Surgical Minnesota, which, in turn, is a wholly owned subsidiary of McKesson Corporation, a corporation publicly traded on the New York Stock Exchange, with a principal place of business in San Francisco, California. **TBC Products Inc.** distributed enteral therapy products to skilled nursing facilities that provided the equipment directly to Medicare beneficiaries, and, for patients covered by Part B of the Medicare program, then submitted claims to the Medicare program on behalf of the beneficiaries for reimbursement from Medicare. Employees of a McKesson Minnesota subsidiary counseled and advised customers regarding how Medicare reimburses for products.

Generally, enteral nutritional therapy products are health care products intended to assist patients who, because of disease or other disorder, are not able to digest and absorb an oral diet. Enteral nutritional therapy products provide nutritional requirements through a tube into the stomach or small intestine of such patients.

As set forth in the stipulation, the parties agreed that Medicare audited the records of suppliers to evaluate medical necessity and the amount of reimbursement to be provided for durable medical equipment such as enteral products. Medicare required persons who distribute, sell, or supply enteral products to maintain complete, accurate, and legible documentation, and to maintain and provide such documentation to Medicare during an audit. Also, when suppliers agreed to do business with

Medicare, they were required to comply with all Medicare laws and regulations, including the Medicare Anti-Kickback statute, before receiving reimbursement from Medicare.

Specifically, the stipulation states that from September 12, 2000, through July 24, 2001, in St. Clair County, within the Southern District of Illinois, and elsewhere, **TBC Products Inc.** and others knowingly endeavored to influence, obstruct, and impede a federal auditor in the performance of official duties relating to SMD. **TBC Products Inc.** and others did so by sending and causing along with others the sending of seven invoices for pump rental fees via the United States Postal Service, regular mail, to SMD. Then, defendant and others sent, and caused others to send, via the United States Postal Service, regular mail, a credit memo to SMD, in an amount approximately equal to the pump rental fees previously paid by SMD. Defendant and others advised SMD to present these documents to federal auditors in the event of a Medicare audit. Defendant and others intended and understood that each of the invoices and the credit memo would be subject to their agreement with SMD not to state, if asked by a federal auditor, that the purpose of the credit memo was to offset the pump rental fees previously paid by SMD.

The stipulation continues, with the parties agreeing that the individuals who made these endeavors, as discussed above in this Stipulation and in the Information, violated material parts of McKesson's Corporate Compliance Program Code of Conduct. Further, at the time the invoices and credit memo were sent, Defendant and others believed it likely that SMD could soon be audited, as other enteral customers of McKesson Minnesota subsidiaries were undergoing Medicare audits regarding enteral pump reimbursement issues during the same time period in the same geographic area.

In addition, a civil settlement agreement between the United States, **TBC Products Inc.** and McKesson contends that **TBC Products Inc.** and McKesson submitted, or caused others to submit, false claims for payment to the Medicare Program (Medicare) under HCPCS codes B9000 and B9002

in connection with or relating to a number of pump rental transactions, and further contends that **TBC Products Inc.** and McKesson agreed to provide enteral nutrition infusion pumps to suppliers for free in exchange for the suppliers' agreements to buy related enteral therapy products from **TBC Products Inc.**, in violation of the Medicare Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(1) & (2), and the express terms of the Medicare durable medical equipment supplier application. Moreover, the United States also contends that **TBC Products Inc.** and McKesson submitted, or caused others to submit, false claims to Medicare under HCPCS codes B9000, B9002, B4035, B4036, and B4150 for medically unnecessary enteral pumps and related enteral therapy products for certain claims. **TBC Products Inc.** agreed to pay to the United States \$3,299,899.00 for this conduct.

Finally, also in the civil settlement agreement, the Office of Inspector General for the Department of Health and Human Services ("OIG) contends that it has a cause of action against **TBC Products Inc.** for supplying Southern Medical Distributors with enteral pumps at no cost to induce SMD to enter into an agreement to buy related enteral therapy and other products. **TBC Products Inc.** agrees to pay to OIG the additional sum of \$99,750.00 for this conduct in exchange for OIG releasing any claims under the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a.

As part of the civil settlement, **TBC Products Inc.** will be permanently excluded from participation in the Medicare and Medicaid programs. McKesson has also entered into a five-year corporate integrity agreement with the HHS Office of Inspector General, requiring McKesson to reform the sales and marketing practices of its enteral feeding operations.

The case was investigated by the Federal Bureau of Investigation, the U.S. Postal Inspection Service, and the HHS Office of Inspector General. The criminal case was prosecuted by Assistant United States Attorney Andrew J. Lay and the civil case was handled by Assistant United States Attorney Gerald M. Burke.